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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0031]

Nationally Recognized Testing Laboratories; Revised Fee Schedule and Adoption of New Application Acceptance and Review Procedures

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA revises the schedule of fees that the agency charges to Nationally Recognized Testing Laboratories (NRTLs) and NRTL applicants. In addition, OSHA adopts new streamlined procedures for accepting and reviewing applications of organizations seeking to obtain, renew, or expand NRTL recognition.

DATES: The revised NRTL Fee Schedule and New Application Acceptance and Review Procedures become effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Notice

On September 22, 2015, OSHA published a notice proposing the adoption of new streamlined procedures for accepting and reviewing applications of organizations seeking to obtain, renew, or expand NRTL recognition, and the revision of the existing NRTL Program fee schedule pursuant to the NRTL Program regulation, 29 CFR 1910.7(f) (80 FR 57222). The agency received one comment in response to this notice, available on www.regulations.gov under docket number OSHA-2007-0031. OSHA addresses this comment, *infra*, in section III of this notice.

OSHA now is proceeding with this notice and hereby adopts the proposed streamlined procedures for accepting and reviewing applications, with one minor, non-substantive change, as discussed *infra*, in section III of this notice. OSHA also adopts the proposed NRTL Program fee schedule, without change, as discussed *infra*, in section IV of this notice.

II. Background on the NRTL Program

Many of OSHA's safety standards (e.g., 29 CFR Part 1910, subpart S) require that equipment and products be tested and certified to help ensure their safe use in the workplace. To implement these requirements, OSHA established the NRTL Program and the agency generally requires NRTLs to perform this testing and certification.

The NRTL Program regulation, 29 CFR 1910.7, requires that, to obtain and retain OSHA recognition as a NRTL, an organization must: (1) have the appropriate capability to

test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of employers subject to the tested equipment requirements and manufacturers and vendors of products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures (29 CFR 1910.7(b)). OSHA requires organizations applying for NRTL recognition to provide, in their applications, detailed and comprehensive information about their programs, processes, and procedures, in writing. When an organization makes an initial application to be recognized as a NRTL, OSHA reviews the written information contained in the organization's application and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when a NRTL applies for expansion or renewal of its recognition, although the type and amount of information in some areas can differ significantly from those of initial applications. In addition, the agency conducts annual assessments¹ of NRTLs to ensure that the recognized laboratories adequately maintain their programs and continue to meet the recognition requirements.

To support these core functions, OSHA also performs a number of ancillary activities. For example, OSHA investigates complaints filed against NRTLs to ensure that the laboratories are performing their testing and certification functions adequately; represents the NRTL Program in a variety of forums related to conformity assessment products used in the workplace; and maintains a detailed website that both explains the program and lists

¹OSHA uses the term "assessments" to mean those activities described by the term "audits" under 29 CFR 1910.7(f). OSHA uses the term "assessments," rather than "audits" because it better reflects the overall purpose of the program's activities, i.e., conformity assessments.

all the laboratories currently recognized under the NRTL Program, the products each laboratory can test, and registered certification marks used by each laboratory.

III. Revision of existing application acceptance and review procedures.

OSHA currently has a number of initiatives underway to improve the operations of the NRTL Program. This section of the notice discusses one such initiative, under which OSHA adopts new streamlined procedures for accepting and reviewing applications of organizations seeking to obtain, renew, or expand NRTL recognition. OSHA will follow these new procedures in lieu of those contained in the agency's existing NRTL Program Directive (CPL 01-00-004, NRTL Program Policies, Procedures, and Guidelines, September 5, 2019) ("Directive" or "NRTL Program Directive") and the additional practices OSHA has routinely followed in accepting applications.

OSHA adopts the new streamlined procedures to eliminate delays caused by multiple revisions by an applicant during the application-acceptance and -review process. In addition, OSHA simplifies the application process to make it clearer when the application acceptance process ends and the substantive application review process begins. This streamlined application process will also reduce NRTL Program fees, as OSHA will discuss later in this notice.

The existing procedures for application acceptance and review are contained in both Appendix A to the NRTL Program regulations, ("Appendix A") and the NRTL Program Directive, CPL-01-00-004. OSHA does not, in this notice, revise Appendix A; instead, OSHA has updated the NRTL Program Directive to include the revised application acceptance and review procedures made final by this notice.

A. Existing procedures in Appendix A that were not subject to revision.

Per Appendix A, the burden is generally “on the applicant to establish by a preponderance of the evidence that it is entitled to recognition as an NRTL” (App. A. Introduction). Thus, in its application, an applicant must “provide sufficient information and detail demonstrating that it meets the requirements set forth in §1910.7, in order for an informed decision concerning recognition to be made” by the Assistant Secretary for Occupational Safety and Health (“Assistant Secretary”), and must also “identify the scope of the NRTL-related activity for which the applicant wishes to be recognized” (i.e., the test standards the applicant will use for testing products) (App. A.I.A.2.b). To meet its burden, the applicant may include any documentation (i.e., enclosures, attachments, or exhibits) it deems appropriate (App. A.I.A.2.c).

Also under Appendix A, “[a]pplications submitted by eligible testing agencies will be accepted by OSHA, and their receipt acknowledged in writing” (App. A.I.B.1.a). Moreover, “[a]fter receipt of an application, OSHA may request additional information if it believes information relevant to the requirements for recognition has been omitted” (Id.). In addition, “OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, as well as the applicant’s administrative and technical practices, and, if necessary, review any additional documentation underlying the application” (App. A.I.B.1.b).

Appendix A provides the responsible OSHA staff with two options following review of the application, and any additional information and on-site review report. On the one hand, if “the applicant appears to have met the requirements for recognition,” responsible OSHA staff must make a “positive finding” to the Assistant Secretary, which consists of “a written

recommendation . . . that the application be approved, accompanied by a supporting explanation” (App. A.I.B.2). Once this recommendation is made, OSHA follows the procedures in the Appendix for making preliminary and final findings on the application (App. A.I.B.4, A.I.B.5, A.I.B.6).

On the other hand, if “the applicant does not appear to have met the requirements for recognition,” responsible OSHA staff must make a “negative finding” to the “applicant in writing, listing the specific requirements of §1910.7 and [Appendix A] which the applicant has not met, and allow[ing] a reasonable period for response” (App. A.I.B.3.a). After the applicant receives “a notification of negative finding (i.e., for intended disapproval of the application), and within the response period provided,” the applicant may either (1) “[s]ubmit a revised application for further review, which could result in a positive finding” (the procedures for which are explained in the previous paragraph), or (2) “[r]equest that the original application be submitted to the Assistant Secretary with an attached statement of reasons, supplied by the applicant of why the application should be approved” (App. A.I.B.3.b.i). In either case (i.e., if a positive finding is made on a revised application or if the applicant requests that the original application be submitted to the Assistant Secretary), OSHA would follow the procedures in the Appendix for making preliminary and final findings on the application (App. A.I.B.4, A.I.B.5, A.I.B.6). The “procedure for applicant notification and potential revision shall be used only once during each recognition process” (App. A.I.B.3.b.ii).

B. OSHA will no longer follow existing NRTL Program Directive procedures for accepting and reviewing applications.

Existing policies contained in the NRTL Program Directive expand on the application procedures contained in Appendix A, as follows. Per the Directive, OSHA staff “formally accept or reject the application” based on a review of the application for “completeness and for adequacy” (Directive Ch. 2.V.B, Ch. 3.II.B.1). The procedures for this review are contained in Appendix D to the Directive (Directive Ch. 3.II.B.1). An application is considered complete “if it contains all necessary documents, and sufficient information for all relevant items,” and is considered adequate “if the information submitted sufficiently demonstrates that the requirements for recognition can be met, and where relevant, **if at least one test standard requested can be approved**” (Directive App. D) (emphasis in original).

In reviewing the application, OSHA staff will return and “take[] no further action” on an application “[i]f [the] application is frivolous or grossly incomplete or inadequate.” In such circumstances, “any future application from the applicant” will be processed “as a new application” (Directive Ch. 3.II.A).

If the application is not “frivolous or grossly incomplete or inadequate,” OSHA staff discusses its review with the applicant, “noting any deficiencies found or clarifications needed” (Directive Ch. 3.II.B.2). If the “application is determined to be complete and adequate,” OSHA “sends a letter to the applicant to accept the application” (Directive Ch. 3.II.C).

If the application is determined to be incomplete or inadequate, the Directive provides two opportunities for applicants to correct deficiencies before rejection of an application (Directive Ch. 3.II.C). In practice, however, OSHA has given applicants three such opportunities. Per the Directive, OSHA “sends a letter to the applicant, detailing the

deficiencies and the additional information needed and requesting a response by an appropriate deadline,” and if “the response does not adequately resolve the deficiencies,” OSHA “provides the applicant a [second] opportunity to respond within a given period.” (Directive Ch. 3.II.C.) If deficiencies remain after the second opportunity, OSHA, in practice, gives applicants a third, but relatively limited, opportunity to make corrections before the effective date of the rejection. This limited duration is sufficient for applicants to correct deficiencies if only a few critical deficiencies remain.

If an applicant’s timely response cures the deficiencies in its application, OSHA “sends an acceptance letter to the applicant” (Directive Ch. 3.II.C). However, “[i]f the applicant does not respond adequately or fails to reply by any deadline(s) provided or an approved extension of these deadline(s),” OSHA “sends a letter notifying the applicant that the application is not accepted and the Case File is closed” (Directive Ch. 3.II.C.2).

Finally, the Directive provides that, after an application is accepted, “the assigned staff determines whether an on-site review is necessary” (Directive Ch. 3.II.D). However, the Directive also provides for non-acceptance during the on-site review process, if an applicant fails to respond adequately to the findings of an on-site review (Directive Ch.4.IV.C).

OSHA proposed that it will no longer follow the existing procedures, described above, to afford applicants three opportunities to modify their applications before acceptance or non-acceptance. These existing procedures are inefficient and cause delays because, in some cases, these multiple opportunities cause the process to take years. OSHA also proposed that it will also not follow its existing procedure for accepting an application only when it is found to be complete and adequate. This existing procedure has caused

confusion as to when the application acceptance process ends and the substantive application review process begins. OSHA received no comments objecting to its proposed decision to no longer follow the above-described existing procedures. OSHA therefore adopts its proposed decision, without change.

C. OSHA adopts new streamlined procedures for accepting and reviewing applications, as proposed, with one minor, non-substantive change.

In lieu of the existing NRTL Program Directive procedures, described above, OSHA proposed to follow streamlined procedures for accepting and reviewing applications. OSHA received one comment in response to the proposal, from Curtis-Strauss, LLC, a NRTL (available on *www.regulations.gov* under Docket Number OSHA-2007-0031). Curtis-Strauss was generally supportive of the proposed streamlined procedures *for accepting and reviewing applications, and of the* proposed revised NRTL Program fee schedule, *discussed below, but suggested two additions to the proposed procedures:*

- Curtis-Strauss suggested that “OSHA provide updates to applicants every 60 days because “[t]his would keep applicants informed and could also enhance OSHA’s management of the agency’s application queue as grouped by applicant,” and because “[t]his may help OSHA to realize other process efficiencies when scheduling on-site audits or performing technical reviews.”
- Curtis-Strauss suggested that “OSHA offer an opportunity to the applicant to have a conference call or an in-person meeting with the relevant OSHA staff promptly after the notice of intent to recommend a negative finding” because “[t]his would give applicants the ability to ask questions and better understand the application’s deficiencies while still leaving enough time to correct them prior to the deadline.”

OSHA supports keeping lines of communication open during the application process. However, OSHA does not believe that formalizing rules for open dialogue, as suggested by Curtis-Strauss, will make the application process more effective. Each application is different and requires different levels and types of communication. The degree and types of communication suggested by Curtis-Strauss may be too little in some cases and too much in others. Therefore, OSHA is not adopting the suggestions made by Curtis-Strauss.

OSHA hereby adopts the streamlined procedures, as proposed, with one minor, non-substantive change, discussed, *infra*. These streamlined procedures will reduce delays, fees, and confusion associated with application processing. Under these streamlined procedures, OSHA will review an application for completeness, but not adequacy, in deciding whether to accept the application. OSHA's review for adequacy, and any on-site review, will occur only after OSHA accepted the application. Furthermore, OSHA will permit the applicant one opportunity only, rather than three, to resolve deficiencies in the completeness of its application before deciding whether to accept it. OSHA describes the new streamlined procedures it adopts in this notice in more detail, immediately below.

1. Initial Review and Acceptance

OSHA proposed that, when OSHA receives an application, it will acknowledge its receipt, establish (for initial applications) or update (for expansion and renewal applications) the docket for the organization, and upload the application materials to the

docket.² For this notice, OSHA decided that it will not establish or update a docket for an organization in connection with an application upon receipt. Instead, OSHA will establish a docket for an application only in connection with the preparation of a *Federal Register* notice announcing a preliminary finding on the application. Establishing dockets for applications at this later point in the application process will further streamline the application acceptance and review process, as many applications are withdrawn or amended before the applications reach the preliminary determination stage.

After it receives an application, OSHA will perform an administrative review of the application to determine whether it is complete (i.e., has sufficient information to determine whether the applicant meets the requirements for recognition). If not complete, OSHA will notify the applicant, in writing, that it has 30 days from the date of the notice to provide the missing or additional information. OSHA will also inform the applicant, in the notice, that it is unable to review the merits of the application because the application itself does not contain sufficient information to show that the requirements for recognition can be met. Finally, OSHA will inform the applicant, in the notice, that this review involved no technical determination, only an administrative one of whether the application has all of the necessary documentation. If the applicant does not respond by the 30-day deadline, or does not adequately respond, and the application remains incomplete, OSHA will inform the applicant that OSHA cannot accept the application, and the applicant must reapply. If

²As currently used by OSHA, the term “docket” means an electronic file folder containing documents that pertain to an official action taken by the agency. OSHA generally makes these documents available to the public.

the applicant provides a complete application within the 30 days, or provided a complete application when it was first received, OSHA will accept the application.

2. Determination of Adequacy

After accepting the application, OSHA will review the merits of the application to determine whether the application is adequate. OSHA will first conduct a technical review of the application (i.e., a detailed review of all of the application's administrative and technical procedures and content). Following this technical review, OSHA will determine whether to conduct an on-site assessment as part of evaluating the management system and technical capabilities of the organization. OSHA will generally conduct an on-site review for initial applications and for expansion applications that involve new areas of testing for the NRTL or areas of concern to OSHA. If OSHA finds deficiencies during the technical review or during the on-site assessment, OSHA will provide the applicant with an explanation of deficiencies and needed corrections, and a 90-day opportunity to respond. Failure to respond by the 90-day deadline will constitute a withdrawal of the application, and OSHA will take no further action on it. If the applicant or NRTL responds, it will need to demonstrate it corrected all deficiencies found in its application and/or during the assessment, and provide evidence to OSHA that the corrections have been implemented into the applicant's or NRTL's management systems. In that case, OSHA will conclude the application is adequate. On the other hand, if OSHA finds that deficiencies remain, OSHA will conclude the application is not adequate.

If OSHA staff determines an application is adequate, OSHA will follow existing procedures, and recommend a positive finding, per Appendix A.I.B.2. Otherwise, OSHA staff will notify the applicant in writing that they intend to recommend a negative finding.

In that case, the applicant has two options under Appendix A.I.B.3. First, the applicant has one additional chance to revise its application within 30 days of receipt of OSHA's written notice. Second, the applicant may request that its original application (as supplemented in response during the review for adequacy) be submitted to the Assistant Secretary (also within 30 days of receipt of OSHA's written notice). In this case, the applicant must attach a statement of reasons to the application explaining why the application should be approved. OSHA would consider the failure to submit a revised application or a request that the original application be submitted to the Assistant Secretary within the 30-day deadline to be a withdrawal of the application.

If the applicant opts to revise its application, OSHA will invoice the applicant for the fee to review its revised submission. This fee would equal the estimated hours for the review multiplied by the hourly rate for the applicable Miscellaneous Fee in the NRTL Program's fee schedule. Like other application fees, this review fee will not be refundable. The applicant will need to pay this fee before OSHA performs the review of the revised application. OSHA will consider a failure to pay the fee within 30 days of receipt of the invoice as a withdrawal of the application. When OSHA receives the fee, OSHA will review the revised application to determine whether to sustain the negative finding or change it to a positive one. If OSHA staff decides to sustain the recommendation for a negative finding, they will first afford the applicant the opportunity to withdraw the application. If the applicant does not withdraw it, OSHA will proceed with the preliminary finding.

Once OSHA staff recommends a positive finding on either an original or revised application, sustains its recommendation for a negative finding after a review of a revised

application, or the applicant requests that the original application be submitted to the Assistant Secretary, OSHA will follow the procedures in Appendix A for making preliminary and final findings on the application (App. A.I.B.4, A.I.B.5, A.I.B.6).

OSHA will no longer follow the existing NRTL Program Directive procedures for accepting and reviewing applications, as described in section III.B. of this notice. Instead, OSHA adopts the proposed streamlined procedures for accepting and reviewing applications, with one minor non-substantive change, as described above.

IV. Revision of the NRTL Program Fee Schedule

A. Background

OSHA revises the existing NRTL Program fee schedule pursuant to the NRTL Program regulation, 29 CFR 1910.7(f). That regulation requires NRTLs and applicants to “pay fees for services provided by OSHA in advance of the provision of those services” (29 CFR 1910.7(f)(1)). OSHA assesses fees for core service activities, that is, for “[p]rocessing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and *Federal Register* notices;” and “[a]udits of sites” (Id.). OSHA’s fee schedule “reflects the full cost of performing the activities” for these services (29 CFR 1910.7(f)(2)).

OSHA calculates fees “based on either the average or actual time required to perform the work necessary; the staff costs per hour (which include wages, fringe benefits, and expenses other than travel for personnel that perform or administer the activities covered by the fees); and the average or actual costs for travel when on-site reviews are involved” (Id.). Thus, the formula for calculating a fee for an activity is the “[Average (or Actual)

Hours to Complete the Activity x Staff Costs per Hour] + Average (or Actual) Travel Costs” (Id.).

OSHA periodically reviews the full costs of performing core services and, if warranted, will propose a revised fee schedule in the *Federal Register* (29 CFR 1910.7(f)(3), (f)(4)). If OSHA approves the proposed fee schedule (after giving the public an opportunity to comment), it “publish[es] the final fee schedule in the *Federal Register*, making the fee schedule effective on a specific date” (29 CFR 1910.7(f)(3), (f)(4)).

To ensure that its fees for core services reflect the full cost of those services, OSHA’s existing fee schedule (which OSHA adopted in 2011) takes into account both the direct and indirect costs it incurs in performing those services (76 FR 10501-10504). Direct costs include staff costs (i.e. the applicable portion of the salaries and fringe benefits of the applicable staff) incurred for application processing and assessment (Id.). Ancillary (or indirect) costs include staff costs incurred for the administration and support of the program, including legal support, budgeting, policy matters, intragency and international coordination, responses to requests for information related to the program, handling complaints, website development and maintenance, and participation in meetings with stakeholders and outside interest groups (Id.). OSHA refers to the sum of its direct costs and ancillary costs as the total program costs (TPC) for the purpose of this notice. TPC does not include travel expenses, which are assessed separately (29 CFR 1910.7(f)(2), 76 FR 10504 n.5).

In the existing fee schedule, OSHA calculates the fee for each core service activity by multiplying an equivalent average cost per hour rate (ECR) by the time it takes to perform that activity: Fee for Activity = ECR x Time for Activity (76 FR 10504). In 2000, when

OSHA began assessing fees for services, OSHA explained that it derived that fee schedule's ECR by dividing TPC by the total available annual work hours of the NRTL Program and legal staff that perform the services (TAW) (*Id.*). Accordingly, $ECR_{2000} = TPC_{2000}/TAW_{2000}$. The approach used in 2000 resulted in fees that recouped the costs only of the time spent actually performing individualized audits and application processing, which is only a portion of TAW, and did not recoup the costs of the time associated with running the program and providing other benefits shared among all NRTLs (*Id.*).

To account for the costs associated with these shared benefits, OSHA adopted a new approach in 2011 for calculating ECR (ECR_{2011}) in the existing fee schedule (*Id.*). Under the new approach, OSHA divides the estimated total cost of the NRTL Program (TPC_{2011}) by the total annual service hours (TAS_{2011}) (*Id.*). This latter term equals the total estimated work hours that the NRTL Program staff spend on the core service activities for which OSHA would bill NRTLs; accordingly, $ECR_{2011} = TPC_{2011}/TAS_{2011}$ (*Id.*). By way of comparison with the 2000 fee schedule, TAS equals TAW minus estimated hours spent on ancillary activities (AH) and leave (LH) (i.e., $TAS = TAW - AH - LH$) (*Id.*). By continuing to include the full program costs in the numerator (TPC_{2011}), but including in the denominator (TAS_{2011}) only the amount of time spent on providing "billable" core services, OSHA believed the revised ECR would more accurately represent the total work hours spent on those core activities than the 2000 equation³ (*Id.*).

³ The existing fee schedule was supposed to have been phased in over a three-year phase-in period. (76 FR 10508). OSHA implemented the first phase on March 28, 2011. However, due to other priorities and

B. Explanation of Revised Fee Schedule

OSHA reviewed its existing fee schedule and, based on that review, proposed to revise its fee schedule. OSHA received one comment in response to the proposal, from Curtis-Strauss, LLC, a NRTL (available on *www.regulations.gov* under Docket Number OSHA-2007-0031). Curtis-Strauss was generally supportive of the proposed NRTL Program fee schedule. OSHA hereby adopts the proposed NRTL Program fee schedule, without change. The revised fee schedule more accurately reflects the full cost of performing the activities for which OSHA charges fees. OSHA explains the details of the revised fee schedule, as follows:

1. OSHA adopts a new grouping of fees for each of the core activities for which OSHA charges fees to NRTLs (i.e., “[p]rocessing of applications for initial recognition, expansion of recognition, or renewal of recognition, including on-site reviews; review and evaluation of the applications; and preparation of reports, evaluations and *Federal Register* notices;” and “[a]udits of sites” (29 CFR 1910.7(f)(1)). Under the existing fee schedule, OSHA groups these activities under the terms Application Processing, Audits, and Miscellaneous (76 FR 10508). Under OSHA’s revised fee schedule, shown below in Table 6, OSHA groups these activities under the terms: Administrative Evaluation, Technical Evaluation, Assessments, *Federal Register* Notices, and Miscellaneous (which includes late fees and other activities not specifically described). OSHA adopts these new groupings to align its fee schedule with the newly-adopted streamlined procedures for accepting and reviewing applications, described above. OSHA also believes that the times

factors, OSHA was unable to implement the second and third phases of the increase, as planned. This revised fee schedule renders moot the implementation of the second and third phases.

it now estimates for completion of these activities (see Tables 2 thru 5, below) more accurately represent the actual time it takes to complete the core activities for which OSHA charges fees. Therefore, adoption of the groupings more accurately reflects the full cost of the services for which fees are assessed.

2. OSHA revises the approach it uses to calculate ECR. Again, under the existing approach, OSHA calculates ECR by dividing TPC by the total estimated work hours that the NRTL Program staff and legal staff spend on the core service activities for which OSHA bills NRTLs (or TAS) (76 FR 10504).

The existing approach depends, in large measure, on OSHA estimating an accurate TAS (i.e., number of “billable” core hours). If this estimate is accurate, the ECR (i.e., the hourly rate OSHA charges for services) will accurately reflect the full cost of services (because $ECR = TPC/TAS$). But OSHA’s estimate has not been accurate in practice. Due in part to insufficient program staffing and other uncontrollable factors, the staff has been unable to work the number of estimated billable hours. This has resulted in an hourly rate charged by OSHA that results in fees that are far lower than the fees OSHA would be charging if its estimate had been accurate.

OSHA could reassess TAS on a regular basis to achieve a more accurate estimate. However, due to the changing nature of the staff’s workload, OSHA likely would need to make such calculation adjustments, and thus publish fee schedules, more than once within a given year to ensure an accurate estimate. OSHA likely could not make such adjustments in a timely manner, largely due to the length of the process for issuing fee schedules.

Under the revised fee schedule, OSHA simplifies the existing calculation. For the purpose of the revised fee schedule, OSHA assumes that certain NRTL Program staff

(which OSHA calls “direct staff” in this notice) work exclusively on core billable activities, and that other NRTL Program staff (which OSHA calls “indirect staff” in this notice) work exclusively on ancillary activities. OSHA calculates the ECR (ECR2015) by dividing TPC by total direct staff annual paid (i.e., compensable) hours, or simply, direct staff annual hours (DSH).

Because of the difficulties of implementing the existing approach, OSHA believes the change in approach in the revised fee schedule (replacing TAS with DSH) will, on average *and* in practice, more accurately reflect the full cost of services for which OSHA charges fees than the existing approach. The accuracy of the DSH approach also does not depend on the variable workload of staff, and will therefore be simpler to implement than the existing approach.

OSHA estimates for the revised fee schedule that four full-time NRTL Program staff members are direct staff and the other full-time NRTL Program staff member is indirect staff. OSHA believes the estimate of four full-time direct staff is reasonable because OSHA projects a significant increase in the number of applications the NRTL Program will process and audits the NRTL Program will perform (i.e., a significant increase in the time NRTL Program staff will spend on core activities).

For the purposes of the revised fee calculation, DSH equals 8,352 hours. This was derived by multiplying 2,088, the regular annual paid hours for one full-time staff, by the number of full-time direct staff⁴ (again, currently four).

⁴This figure is the number of compensable hours in a fiscal year, which is used to determine full-time equivalents (FTE) (i.e., full-time staffing levels) for purposes of the Federal Budget. See Office and Management and Budget (OMB) Circular A-11, Preparation, Submission, and Execution of the Budget,

As explained more fully in the notice of proposed decision, the proposed (now revised) fees for individual core service activities are often significantly less than the analogous existing fees for such services. These changes arise from the change in the way that OSHA will calculate the ECR (which excludes some previously included indirect costs but increases the number of direct staff hours) and streamlined review procedures (which decrease the amount of staff hours needed for some tasks in the process). OSHA nonetheless estimates that fees collected under the revised fee schedule will, *in toto*, approximate the full costs of administering the NRTL Program because, as stated above, OSHA estimated a significant increase in the number of applications the NRTL Program will process and audits the NRTL Program will perform (i.e., a significant increase in the time NRTL Program staff will spend on core service activities).

3. Under the revised fee schedule, OSHA breaks out the fees for the legal review of *Federal Register* notices associated with initial, renewal, and expansion applications from the general fees it charges for preparation of these *Federal Register* notices by NRTL Program staff. Under the existing fee structure, OSHA charges one general fee that covers both preparation and legal review of a Final Report and *Federal Register* notice (76 FR 10505-10511).⁵

Section 85—Estimating Employment Levels and the Employment Summary (Schedule Q), 2015 (available at the time of publication of the proposal at http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/s85.pdf).

⁵ Although OSHA did not state explicitly in the 2011 notice that the Final Report and *Federal Register* notice fee included legal review, the hours used for calculating this fee did in fact include the legal staff's time for this review.

The revision more accurately reflects the portion of the fees attributed to legal review. Under the existing fee structure, OSHA charges a single hourly rate for core activities, regardless of whether the time charged is attorney time or NRTL Program staff time (76 FR 10505). Under the revised fee structure, OSHA calculates a separate hourly rate for core activities performed by legal staff to reflect that certain ancillary costs, such as web site development and maintenance, which are properly incorporated into the hourly rate for NRTL Program staff, should not be incorporated into the hourly rate for legal services. OSHA continues to incorporate in the hourly rate for legal costs those indirect costs that tie directly into the salary of legal staff, such as fringe benefits. As a result of the revision, the hourly rate for legal fees, shown in Table 5, is less than the rate for NRTL Program staff fees, shown in Table 1.

OSHA notes that the Department of Labor incurs legal costs in connection with the NRTL Program other than costs associated with the legal review of *Federal Register* notices associated with initial, renewal, and expansion applications. These other legal costs are included in the existing fee schedule (See 76 FR 10504 n.5), and continue to be included in the revised fee schedule, as elements in TPC, and therefore, as elements of the calculation of the hourly rate for NRTL Program staff.

4. OSHA revises the manner it calculates the salaries of NRTL Program staff and Solicitor of Labor staff for the purpose of calculating TPC. For the existing fee schedule, OSHA calculates staff costs using actual staff salaries, which can vary, sometimes significantly, over time due to changes in personnel and positions. Under the revised fee schedule, OSHA calculates salaries using midpoint salaries. These midpoint salaries are the Step 5 amounts shown for a particular grade (e.g., grade 13) in the Office of Personnel

Management (OPM) General Schedule (GS) salary table for 2015, called the “Salary Table 2015-DCB,” which pertains to federal workers who have duty stations located mostly in Washington, D.C, Maryland, and Virginia. (See Office of Personnel Management 2015 General Schedule (GS) Locality Pay Tables at www.opm.gov.) These midpoint salaries may differ from actual staff salaries, which depend on the actual grade and step for each staff. However, using these midpoint figures simplifies the calculation of the staff costs and provides a consistent fee that OSHA expects will reflect, on average, actual staff salaries over time. Because OPM adjusts its salary tables annually, OSHA will monitor the adjustments to determine if their magnitude requires modification of the fee schedule.

Also, to include an amount for regular fringe benefits, OSHA multiplies the midpoint salaries by a fringe benefit rate. Under the revised fee schedule, OSHA uses a 29% rate, and based this rate on the one the agency uses to estimate fringe costs of other OSHA activities.

5. OSHA revises the manner in which it calculates ancillary (or indirect) costs. Under the existing fee schedule, OSHA includes, in its calculation of ancillary (or indirect) costs, equipment, training, and space of the staff. Under the revised fee schedule, OSHA does not include these items in its calculation of ancillary costs because NRTLs do not derive a special benefit from these cost items. For example, training costs for the program staff currently consist of general training available to all employees. OSHA will include such costs in future fee schedules if it determines that NRTLs do derive special benefits from the items. OSHA believes the revision to the fee schedule more accurately reflects the full costs of performing the activities for which OSHA charges fees.

6. Under the revised fee schedule, OSHA does not charge fees for determining whether proposed test standards are appropriate test standards under the NRTL Program. OSHA charges such fees under the existing fee schedule. However, OSHA recently updated its process whereby it incorporates new test standards into the NRTL Program's list of appropriate test standards (the scope of an appropriate test standard must cover products for which OSHA requires NRTL approval and must meet the requirements of 29 CFR 1910.7(c)(1)). Under the updated policy, OSHA adds new test standards when it is made aware of new test standards and determines them appropriate (79 FR 17188). It is therefore no longer necessary to charge NRTLs specific fees in connection with the incorporation of standards into the list of appropriate test standards. OSHA notes, however, that the costs associated with the incorporation of test standards will be ancillary costs under the revised fee schedule, and will therefore be an element in the calculation of the fees OSHA assesses.

C. Basis and Derivation of Revised Fee Amounts

Table 1, below, shows the direct and indirect program costs (TPC), direct staff annual hours (DSH), and hourly rate OSHA uses to calculate the revised fees.

Table 1. NRTL Program Staff – Hourly Rate Calculation

Description	
OSHA Direct Costs	\$579,383
OSHA Ancillary Costs	\$287,541
<i>OSHA Total Costs of NRTL Program, excluding travel (TPC)</i>	<i>\$866,924</i>
<i>OSHA Direct Staff Annual Hours (DSH)</i>	<i>8,352</i>
OSHA Hourly rate (TPC divided by DSH)	\$104

Tables 2 to 5, below, describe the fees OSHA adopts in conjunction with the core services for which OSHA charges fees. OSHA calculates each fee (with the exception of fees for legal review of *Federal Register* notices) by multiplying the NRTL Program staff hourly rate of \$104 (see Table 1, above) by the time OSHA estimates it takes NRTL Program staff to perform the activity at issue, on average (i.e., fee for activity = NRTL Program staff hourly rate (\$104) X estimated time for activity). OSHA calculates the fees for legal review of *Federal Register* notices by multiplying the hourly rate for legal services of \$89 (see Table 5, below) by the time OSHA estimates its takes legal staff to perform the activity at issue, on average (i.e., fee for activity = legal staff hourly rate (\$89) X estimated time for activity). OSHA notes that it rounds the revised fees down to the lower multiple of ten.

OSHA's revised (and existing) fee for travel related to assessments is based on actual travel expenses, and thus OSHA does not derive a fee to charge for travel.

Table 2. Fees for Administrative Evaluation

Program Component	Average Hours	Fee
Initial Application - Limited review (per application)	40	\$4,160
Expansion Application - Limited review (per application)	24	\$2,490
Renewal request review	16	\$1,660

Table 3. Fees for Technical Evaluation

Program Component	Average Hours	Fee
Initial Application - Management Procedures review (per application)	80	\$8,320
Initial or Expansion Application - Testing capability review (per standard)	24	\$2,490
Initial or Expansion Application - Site capability review (per site)	24	\$2,490

Table 4. Fees for Assessments

Program Component	Average Hours	Fee
Assessment preparation and close out (per lead auditor)	54	\$5,610
Assessment preparation and close out (per assistant auditor)	32	\$3,320
Each day on-site or at office (per auditor)	8	\$830

Table 5. Fees for *Federal Register* Notices

Program Component	Average Hours	Fee
Initial Application <i>Federal Register</i> notice preparation (per application)**	20	\$4,080
Initial Application <i>Federal Register</i> notice legal review (per application)	16	\$1,420
Total for Initial Application <i>Federal Register</i> notices	36	\$5,500
Renewal or Expansion Application <i>Federal Register</i> notice preparation (per application)**	16	\$2,470
Renewal or Expansion Application <i>Federal Register</i> notice legal review (per application)	8	\$710
Total for Renewal or Expansion Application <i>Federal Register</i> notices	24	\$3,180

**Includes estimated Office of Federal Register (OFR) processing fees: \$2,000 per initial application notice, or \$810 per expansion and renewal notice, as applicable.⁶

⁶The OFR charges Federal agencies a per column rate for publishing *Federal Register* notices. See <http://www.archives.gov/federal-register/write/conference/publishing-billing.pdf>. OSHA derived an estimated average processing fee based on the number of columns in typical *Federal Register* notices published for the NRTL Program.

D. Revised Fee Schedule and Description of Fees

OSHA adopts the revised fee schedule shown below in Table 6.

Table 6. Revised NRTL Program Fee Schedule

Fee Category	Fee Activity	Fee *
Administrative Evaluation	Initial application – Limited review	\$4,160
	Expansion application – Limited review	\$2,490
	Renewal request review	\$1,660
Technical Evaluation	Initial application – Detailed management procedures review	\$8,320
	Initial or Expansion application - Testing capability review (per standard)	\$2,490
	Initial or Expansion application - Site capability review (per site)	\$2,490
Assessment	Assessment preparation and close out (per lead auditor, per site)	\$5,610
	Assessment preparation and close out (per assistant auditor, per site)	\$3,320
	Assessment – per day at office, on-site, or on travel (per auditor, per site)	\$830 plus travel expenses
<i>Federal Register</i> Notices	<i>Federal Register</i> notices – initial application	\$5,500
	<i>Federal Register</i> notices – renewal or expansion application	\$3,180
Miscellaneous	Late Fees	\$210
	Other activities or services not specifically described (per hour)	\$104

*All fees must be paid in advance of activity or service

General information regarding the fees

1. Explanation of Fees

- The Administrative Evaluation fee covers an administrative review of the application packet to ensure completeness. It also covers creating the docket and addition of the application to the docket. An applicant must submit this fee with the application.

- The Technical Evaluation fee covers a detailed examination of the application packet to determine the applicant's ability to meet the requirements of the requested recognition/expansion. An applicant must submit this fee with the application.
- On-site or office assessment fees are calculated based on estimated staff time and, if applicable, actual travel expenses. Travel expenses include expenses for hotel, air transportation, ground transportation, and per diem. The assessment preparation and close-out fees (per lead and assistant auditor, as applicable) include staff time to make travel arrangements and file travel reimbursement claims. At the conclusion of the assessment, actual travel expenses are calculated based on the government per diem and other travel rules. OSHA will bill or refund the difference between the prepaid and the actual travel amounts.
- The fees for "Other activities or services not specifically described" cover application- or assessment-related activities that are not specifically covered by the other fee categories. One example would be the technical review of a revised application that an applicant submits to OSHA in response to OSHA's negative finding on an applicant's original application.

2. Refunds

- If an application is withdrawn before OSHA commences the Technical Evaluation, or the application is rejected after OSHA completes the Administrative Evaluation, OSHA will refund the Technical Evaluation fee.

- If an application is withdrawn before OSHA commences travel to a site to perform an on-site assessment, the agency will refund any prepaid assessment fees.

3. **Late Fees/Failure to Pay.** If an invoice is not paid in full by the due date, the Late Payment fee will be assessed. If payment for an application is not received within 30 days of the invoice's original due date, the application will be rejected. If payment for an assessment is not received within 30 days of the invoice's original due date, OSHA will commence the process to revoke the NRTL's recognition (see 29 CFR 1910.7, App. A.II.E). OSHA notes that NRTLs or applicants may be subject to collection procedures under U.S. Federal law for unpaid fees.

4. **Changes to Fee Schedule.** The effective date of this fee schedule is thirty days after the publication of the Assistant Secretary's notice in the *Federal Register*. A NRTL or applicant pays fees according to the fee schedule in effect on the date the agency receives an application or commences an on-site assessment.

V. Paperwork Reduction Act Requirements

The revisions adopted in this notice contains collections of information (also referred to as "paperwork" requirements) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq, and OMB's regulations at 5 CFR part 1320. The purposes of the PRA include enhancing the quality and utility of information the Federal government requires and minimizing the information collection burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need

for and proposed use of the information. The PRA defines “collection of information” to mean, “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format” (44 U.S.C. 3502(3)(A)).

Under the PRA, a Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

As required by 5 CFR 1320.8(d), OSHA published a *Federal Register* notice on December 28, 2016 (81 FR 95650, Docket No. OSHA-2010-0007) requesting comments from the public and other interested parties on proposed revisions to the Information Collection Requirements approved by OMB as part of the NRTL Program’s Paperwork Package. The notice was part of a preclearance consultation program that provided interested parties with an opportunity to comment on the current request for OMB approval of modification of the existing Paperwork Reduction Act package by the Office of Management and Budget (OMB). The previous approval of the existing information collection requirements by OMB and the request for modification of that approval both addressed the information collection requirements found in the NRTL Program requirements (29 CFR 1910.7) (OMB Control Number 1218-0147).

The *Federal Register* notice generated two comments from the public. Both comments are available on *regulations.gov* under docket number OSHA-2010-0007. OSHA

responded to these comments in a Supporting Statement for the Revised Information Collection Requirements. A copy of the revised Information Collection Requirements, with applicable supporting documentation, including a description of the likely respondents, frequency of response, and estimated total burden, may be obtained free of charge from the *RegInfo.gov* website at

http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=1218-0147.

On June 29, 2018, the Department of Labor submitted to OMB for approval the proposed revisions to the Information Collection Requirements (83 FR 30779). OMB provided approval of this submission on November 29, 2018.

Agency: DOL- OSHA.

Title of Collection: Definition and Requirements of a Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Control Number: 1218-0147.

Affected Public: Business or other for-profit.

Total Estimated Number of Respondents: 20.

Total Estimated Number of Responses: 140.

Total Estimated Annual Time Burden: 1,523 hours.

Total Estimated Annual Other Costs Burden: \$718,836.

VI. Final Decision

OSHA will no longer follow the existing NRTL Program Directive procedures for accepting and reviewing applications, as described in section III.B. of this notice. Instead, OSHA adopts the proposed streamlined procedures for accepting and reviewing

applications, with one minor, non-substantive change, as described in section III.C. of this notice.

OSHA also adopts the proposed revised fee schedule, as described in sections IV.B, IV.C, and IV.D of this notice, without change. Moreover, as described in sections IV.B, IV.C, and IV.D of this notice, the revised fee schedule adopted herein replaces OSHA's existing fee schedule.

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 12, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019-20212 Filed: 9/18/2019 8:45 am; Publication Date: 9/19/2019]